Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 344 of 2002

The New India Assurance Company Ltd.,
Branch Office, Vikas Nagar, District Dehradun,
through its Divisional Manager, Divisional
Office, Nainital Road, Opposite Judges Court,
Haldwani, District Nainital.

..... Appellant

Versus

(1)Smt. Kaunri Devi W/o late Surat Singh,
(2)Poti Singh S/o late Surat Singh,
(3)Km. Sona,
(4)Km.Anita,
(5)Km.Manita,
(6)Km.Pritima alias Manju,
(7)Km.Pasmina
All Daughters of Late Surat Singh,
All Residents of Village-Kotgaon, Tehsil-
Purola, District Uttarkashi.
(8)Surendra Singh S/o Sarwan Singh,
R/o Arakot (Bangar), District Dehradun.

..... Respondents.

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Sri Tanveer Alam Khan, learned counsel for the appellant.
Sri B.S.Negi, learned counsel for the claimants/respondents.

Date: 27th Aug., 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S.Verma, J.

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 04.09.2002 passed by the Motor Accident Claims Tribunal/District Judge, Uttarkashi in Motor Accident Claim Case No. 83 of 1999, whereby the appellant-New India Assurance Company has been directed to pay Rs. 3,91,500/- as compensation to the claimants alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that on 29.5.1999 the deceased was traveling in truck No. UGY 8577 for going to Jakhol to unload the Government Ration from the said truck. When the said truck reached near Sankri Gaon at Jakhol-Panchgain motor road at 11.00 a.m. it met with an accident and fell in the river Supin. The dead body of Surat Singh was recovered from the river after three months. It was alleged that the accident occurred due to rash and negligent driving of the driver of said truck. The deceased was about 39 years of age at the time of accident and he was earning Rs. 10,000/- per month by doing coolie work and agriculture work. The claimants, who are the dependents of the deceased filed the claim petition for compensation to the tune of Rs.24,66,665/- on account of death of Surat Singh.

3- Surendra Singh-Opp.party No.2 is the owner of the truck who filed his written statement in the claim petition before the Tribunal. He alleged that the accident was not occurred due to negligence of the driver but stated that the accident occurred due to sudden lock of steering of the vehicle in question. The Insurance Company-Opp.party No.3 also filed its written statement denying the allegations of the claim petition and also alleged that the driver of the said truck was not having a valid driving licence at the time of accident. On the pleadings of the parties, the Tribunal framed necessary issues and after recording evidence allowed the claim petition accordingly. Feeling Aggrieved, the Opp.party No.3- Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that he deceased was unauthorisedly traveling in the offending truck and he was not covered under the policy of the insurance. We have gone through the impugned

judgment. The learned Tribunal while dealing issue No.6 held that that the truck was carrying the Government ratio and the deceased was travelling as labour in the said truck to unload the ration. He was not a gratuitous passenger and he was covered under the insurance policy.

5- The learned counsel for the appellant further submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicles Act, 1988 and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. The Insurance Company has moved application for permission under Section 170 of the aforesaid Act, contained in Annexure No.4 to the appeal. The Tribunal passed the order dated 22.12.2001 granting permission to the insurance Company to contest the case. In this case, the owner of the offending truck has contested the case before the Tribunal. The Tribunal has not given any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory***

negligence of the offending vehicle." Thus in view of the above law laid down by the Apex Court, the contention raised by the learned counsel for the appellant is not tenable and has to be ignored outright.

5- In view of the aforesaid discussions, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

27.08.2004
P.Singh